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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KEVIN SO,) Case No. CV 08-03336 DDP (AGRx)
)
Plaintiff,) **ORDER GRANTING MOTION TO MODIFY**
) **SCHEDULING ORDER**
v.)
) [Motion filed on July 24, 2009]
LAND BASE, LLC; UNIVEST)
FINANCIAL SERVICES, INC.;)
BORIS LOPATIN, individually) NO FURTHER EXTENSIONS
and d/b/a BORIS LOPATIN) WILL BE GRANTED
ASSOCIATES and CHARLES W.)
WOODHEAD,)
)
Defendants.)
)

This matter comes before the Court on Plaintiff Kevin So's Motion to Modify the Scheduling Order in this case. Defendants KM & Associates International, LLC, KB& M Projects, International, LLC, and Kevin Kondas have opposed the Motion. After reviewing the materials submitted by the parties and considering the arguments therein, the Court grants the Motion, and continues the dates set in the scheduling order six months. The Court notes that it will be hesitant to grant further continuances without a particularized showing of diligence and good cause.

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1 **I. BACKGROUND**

2 Because the procedural history of this case is well-known to
3 the parties and the Court, the Court reviews it only briefly here.
4 Plaintiff filed his Complaint on May 20, 2008, alleging fraud and
5 other related violations arising from an investment. With leave of
6 the Court, Plaintiff filed a First Amended Complaint on January 16,
7 2009. The Court granted a Motion by Plaintiff to amend the
8 scheduling order to allow for the filing of a Second Amended
9 Complaint. See Doc. No. 153 (May 8, 2009). The Court's Order
10 advised Plaintiff that he would be granted no further extensions to
11 that deadline. With leave of the Court, Plaintiff filed a Second
12 Amended Complaint on July 16, 2009. Each iteration of the
13 Complaint added new defendants. The Court granted jurisdictional
14 discovery as to one defendant, and recently extended the deadline
15 for that discovery sixty days.

16 The Court's November 2008 Scheduling Order set the last day to
17 amend or join other parties and to amend the pleadings for March 9,
18 2009, the discovery cut-off for September 11, 2009, the last day to
19 file motions for October 9, 2009, and a Final Pretrial Conference
20 and Jury Trial for January 2010. Aside from the extension of the
21 deadline to amend, the Court's November 2008 Scheduling Order has
22 not been modified.

23 **II. DISCUSSION**

24 Plaintiff now seeks to amend the Scheduling Order to continue
25 all dates for six months. The opposing defendants argue that
26 Plaintiff has not shown good cause, and that an extension of two
27 months at the most is warranted. As the Court is satisfied that
28 Plaintiff has been reasonably diligent and does not see specific

1 prejudice, the Court grants Plaintiff's request, but notes that the
2 Court will not be inclined to grant any additional requests by
3 Plaintiff without a compelling basis to do so.

4 **A. Legal Standard**

5 Federal Rule of Civil Procedure 16(b) provides that a
6 scheduling order "may be modified only for good cause." Fed. R.
7 Civ. P. 16(b). In assessing whether there is "good cause" under
8 Rule 16(b), a court "primarily considers the diligence of the party
9 seeking the amendment" and the "moving party's reasons for seeking
10 modification." Johnson v. Mammoth Recreations, Inc., 975 F.2d 604,
11 609 (9th Cir. 1992); Fed. R. Civ. P. 16(b), Adv. Comm. Note to 1983
12 Amdt; Zivkovic v. S. Cal. Edison Co., 302 F.3d 1080, 1087 (9th Cir.
13 2002) ("The pretrial schedule may be modified if it cannot
14 reasonably be met despite the diligence of the party seeking the
15 extension." (internal quotation marks omitted)). "If the moving
16 party was not diligent, "the inquiry should end." Mammoth
17 Recreations, 975 F.2d at 609. While the focus of the "good cause"
18 inquiry is on the diligence of the party seeking the modification
19 of the scheduling order, other considerations can include (1)
20 whether trial is imminent, (2) whether the request is opposed, (3)
21 whether the moving party would be prejudiced, (4) whether the
22 moving party was diligent in obtaining discovery within the
23 guidelines established by the court, (5) the foreseeability of the
24 need for additional discovery in light of the time allowed for
25 discovery by the district court, and (6) the likelihood that
26 discovery will lead to relevant evidence. United States, ex rel.,
27 Schumer v. Hughes Aircraft Co., 63 F.3d 1512, 1526 (9th Cir. 1995),
28 cert. granted in part, 519 U.S. 926, vacated on other grounds, 520

1 U.S. 939 (1997) (citing Smith v. United States, 834 F.2d 166, 169
2 (10th Cir. 1987)).

3 **B. Plaintiff's Motion to Amend**

4 Plaintiff argues that there is good cause to amend because of
5 the procedural posture of this case. In particular, Plaintiff
6 focuses on (1) the addition of new defendants with the Second
7 Amended Complaint and (2) the Court's grant of an extension of
8 jurisdictional discovery as to Meltzer. In Opposition, Defendants
9 argue that Plaintiff has had ample time to conduct his
10 investigation and that he has not shown good cause.

11 Given the procedural posture of this case, the Court finds
12 that Plaintiff has made a showing sufficient to justify amendment
13 of the Scheduling Order and that there is good cause for a six-
14 month continuance of all dates. The Court finds Plaintiff's
15 prosecution to have been reasonably diligent. Although the Court
16 would normally be hesitant to grant a six-month continuance, the
17 Court does so here with the expectation that this will give *all*
18 parties more than ample time to complete discovery, file any
19 dispositive motions, prepare for trial, conduct settlement talks,
20 and coordinate among all of them at each of these stages.
21 Accordingly, the Court grants the extension, with the expectation
22 that no further continuances will be necessary.

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1 **III. CONCLUSION**

2 For the foregoing reasons, the Court continues all pending
3 dates in the Scheduling Order as follows:

4 DISCOVERY CUT-OFF 04-05-10

5 LAST DAY TO FILE MOTIONS 05-07-10

6 FINAL PRETRIAL CONFERENCE 07-26-10 at 4:00 p.m.

7 10-DAY JURY TRIAL 08-03-10 at 9:00 a.m.

8 IT IS SO ORDERED.

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11 Dated: August 18, 2009


DEAN D. PREGERSON
United States District Judge